
Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Telephone Number Portability) CC Docket No. 95-116
)
CTIA Petitions for Declaratory Ruling on)
Wireline-Wireless Porting Issues)
)
)
)

To: The Commission

**REPLY COMMENTS OF DOBSON CELLULAR SYSTEMS, INC.
ON INITIAL REGULATORY FLEXIBILITY ANALYSIS IN
TELEPHONE NUMBER PORTABILITY PROCEEDING**

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SUMMARY

In these reply comments, Dobson requests that the Commission affirm its findings in its Initial Regulatory Flexibility Analysis (“IRFA”) regarding the *Intermodal Order* and issue its Final Regulatory Flexibility Analysis (“FRFA”) as soon as possible so that the stay on the *Intermodal Order* can be limited without further delay.

The Commission should reject the rural ILEC commenters argument that it should include as part of its analysis of the *Intermodal Order* the costs that an ILEC might incur to transport calls from its customers to numbers held by former customers that have ported their numbers to a wireless carriers, where the wireless carrier’s point of interconnection is located outside of the ILEC’s local calling area. The obligation for LECs to deliver traffic to terminating wireless carriers’ switches did not arise from the *Intermodal Order* and should not be considered in this limited proceeding. The allocation of financial responsibility for transport is open issue before the Commission in both the *Intercarrier Compensation* proceeding and a petition pending since 2002. If the Commission, however, decides it must consider the burden issue in its analysis, it must consider the benefit that LEC customers receive from the transport of ported numbers and the equally onerous transport obligations that CMRS carriers also face when transporting their originating traffic to LECs.

Additionally, the competitive value of intermodal LNP far outweighs any relatively minor burden placed on small LECs. To allow LECs to avoid a statutory requirement in an RFA would be a bold step, and the Commission has consistently recognized the importance of LNP since before the statute was amended to require LECs to provide such capability. Statistics provided by small LECs that suggests low demand for intermodal LNP are irrelevant. In a dynamic fashion, rural markets are changing, and as wireless service becomes more advanced and ubiquitous in rural areas, more wireline customers are likely to port their numbers to a wireless carrier.

Moreover, intermodal LNP is not unreasonably burdensome for small LECs to implement. The *Intermodal Order* and IRFA took steps to minimize the burden on small LECs. Furthermore, the costs of implementing LNP should be water under the bridge for the vast majority of small LECs. Small LECs were required to provide LNP well before the stay was issued by the D.C. Circuit. In fact, it is bizarre that many small LECs and their associations acknowledge that most small LECs have already spent the money to deploy LNP but somehow should be relieved of their obligation to provide LNP.

The steps taken by the Commission in the *Intermodal Order* and IRFA were enough to address any minor burden that might have been imposed on smaller carriers, and therefore the Commission should issue the FRFA without delay.

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Dobson Cellular Systems, Inc. (“Dobson”), on behalf of itself and its affiliated wireless carriers,¹ submits the following reply comments regarding the Commission’s Initial Regulatory Flexibility Analysis (“IRFA”)² regarding the *Intermodal Order*.³ Dobson has an important interest in this proceeding because, as a CMRS carrier operating primarily in rural and suburban markets, Dobson has wireless facilities in the territories of, and exchanges traffic with, numerous

¹ Dobson and American Cellular Corporation (“ACC”) are wholly-owned subsidiaries of Dobson Communications Corporation. ACC is managed by Dobson pursuant to a management agreement. Both Dobson and ACC hold Cellular Radiotelephone Service and Personal Communications Service licenses.

² *Federal Communications Commission Seeks Comment on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding*, CC Docket No. 95-116, *Public Notice*, FCC 05-87 (rel. April 22, 2005) (“*Public Notice*”).

³ *Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 23697 (2003), *stayed and remanded sub nom. United States Telecom Ass’n v. FCC*, 400 F.3d 29 (D.C. Cir. 2005) (“*Intermodal Order*”).

small LECs. In most cases, Dobson's interconnection with small LECs is indirect, via regional or RBOC tandems.

The D.C. Circuit rejected all of the rural LECs' objections to the *Intermodal Order*, sending it back to the Commission solely to complete a ministerial requirement. The Commission should reject the LECs' attempts in this limited proceeding to re-litigate those issues; instead, the Commission should issue its Final Regulatory Flexibility Analysis ("FRFA") as soon as possible so that the stay on the *Intermodal Order* can be lifted without further delay.

I. THE OBLIGATION FOR LECs TO DELIVER TRAFFIC TO TERMINATING WIRELESS CARRIERS' SWITCHES DID NOT ARISE FROM THE *INTERMODAL ORDER* AND SHOULD NOT BE CONSIDERED IN THIS LIMITED PROCEEDING

Several rural ILEC commenters argue that the Commission should include as part of its analysis of the *Intermodal Order* the costs that an ILEC might incur to transport calls from its customers to numbers held by former customers that have ported their numbers to a wireless carrier, where the wireless carrier's point of interconnection ("POI") is located outside of the ILEC's local calling area.⁴ That responsibility, however, does not arise from the *Intermodal Order*. Thus, it is not properly part of this Regulatory Flexibility Analysis ("RFA").

As the *Intermodal Order* acknowledged, the same types of questions regarding responsibility for transport are raised whenever a wireless carrier that does not have direct interconnection facilities in an ILEC's rate center obtains numbering resources in that rate center.⁵ The issue is the same whether the wireless carrier obtains new numbering resources

⁴ See, e.g., National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("NTCA/OPASTCO") Comments at 5-7; Central Texas Telephone Cooperative, Inc. Comments at 3.

⁵ *Intermodal Order*, 18 FCC Rcd at 23713; see also Initial Regulatory Flexibility Analysis, App. A to *Public Notice* at ¶ 13 ("IRFA").

from the North American Numbering Plan Administrator (“NANPA”) or the thousands-block Pooling Administrator (“PA”), or instead obtains a number by accepting a port in from a former ILEC customer. In either case, it is the originating LEC’s responsibility to deliver its customers’ local calls to the terminating carrier’s point of interconnection within the MTA.⁶

Although this was acknowledged in the *Intermodal Order*, NTCA/OPASTCO asserts that “if a telephone number is ported to a wireless carrier that has no established interconnection relationship with a two percent carrier, the ‘calls to the ported number’ cannot be rated ‘in the same fashion as they were prior to the port.’”⁷ NTCA/OPASTCO claims that, in “the absence of an established interconnection arrangement, calls from the customers of two percent carriers to a wireless carrier’s customers are generally carried by the originating end user’s choice of toll carrier or IXC.”⁸ NTCA/OPASTCO fails to explain, however, why it would be lawful for a two percent carrier to route *local* traffic to a toll carrier or IXC. The Commission’s rules specify that intra-MTA traffic between LECs and CMRS carriers is to be treated as local traffic rather than access traffic for intercarrier compensation purposes.⁹ Further, if a two percent carrier allows its customers to dial, on a local basis, its own numbers in a given rate center, it would violate its dialing parity obligations to require 1+ toll dialing to other carriers’ numbers rated in the same

⁶ *Mountain Communications Inc. v. FCC*, 355 F.3d 644, 648 (D.C. Cir. 2004) (finding that Section 251(c)(2)(b) “obliges an LEC to provide interconnection facilities with any other carrier at a single ‘technically feasible’ [point of interconnection]”); *TSR Wireless, LLC v. U S West Communications, Inc.*, *Memorandum Opinion and Order*, 15 FCC Rcd 11166, 11184 (2000) (noting that the rules require delivery of local traffic to CMRS providers anywhere within the MTA).

⁷ NTCA/OPASTCO Comments at 6 (quoting *Intermodal Order*, 18 FCC Rcd at 23712).

⁸ NTCA/OPASTCO Comments at 6. Nor was this issue addressed in the D.C. Circuit’s decision. The court specifically did not consider whether the *Intermodal Order* changed interconnection obligations. *USTA*, 400 F.3d at 39 & n.16.

⁹ *See* 47 C.F.R. § 51.701(b)(2).

rate center.¹⁰ Also, CMRS carriers have the right to obtain local numbers in the areas in which they are licensed and provide wireless service,¹¹ and to elect indirect interconnection.¹² NTCA/OPASTCO's position, if accepted, would give two percent carriers the right to deny CMRS carriers both the right to obtain local numbers for their customers and the right to elect indirect interconnection, or to force CMRS carriers to make a Hobson's choice between the two. It is not surprising that NTCA/OPASTCO offers no support for its position, for none exists. The allocation of financial responsibility for this type of transport is an open issue before the Commission in the *Intercarrier Compensation* proceeding,¹³ and has been pending since long before the *Intermodal Order* was released.¹⁴ The *Intermodal Order* did not resolve this issue. Thus, the *Intermodal Order* did not impose any new transport cost obligations, and transport cost issues are not properly a part of this RFA.

Finally, even if the Commission considers the burdens associated with transport in its analysis, the LECs' transport obligations are not a benefit solely to CMRS carriers and their customers.¹⁵ Transporting calls to ported numbers allows LEC customers to complete calls to

¹⁰ 47 U.S.C. § 251(b)(3). Two percent carriers are bound by section 251(b) unless granted an affirmative exemption by the state. 47 U.S.C. § 251(f)(2).

¹¹ 47 C.F.R. § 52.15(g)(2).

¹² 47 U.S.C. § 251(a).

¹³ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, 16 FCC Rcd 9610 (2001).

¹⁴ Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, CC Docket No. 01-92 (filed July 18, 2002) ("Sprint Petition"). The "rating and routing" issue refers to the situation that occurs when a LEC must deliver local traffic to another carrier at a distant point of interconnection.

¹⁵ See, e.g., Rural Carrier Comments at 9 (noting that resolution of the rating, routing and interconnection issues in the *Intermodal Order* shifts the burdens to the small rural carriers); Missouri Small Telephone Company Group ("MoSTCG") Comments at 12 (noting the unfair

(continued on next page)

their called parties (*i.e.*, CMRS customers). Furthermore, the LECs fail to note that the transport burden falls equally on wireless carriers. CMRS carriers often are required to transport their originating traffic to LEC switches that are distant from the CMRS carrier's mobile switching center. Because CMRS licensing boundaries are not consistent with the LATA boundaries of the LEC, sometimes CMRS must deliver local traffic to LEC switches that are outside the wireless service area of that carrier at no additional cost to the LEC. As such, the Commission should reject ILEC commenters who state that the transport obligations are only a burden on the LECs and do not bestow any benefit on the LECs or their customers.

II. THE COMPETITIVE VALUE OF INTERMODAL LNP OUTWEIGHS THE RELATIVELY MINOR BURDENS ON SMALL LECS

A. Intermodal LNP Brings Substantial Competitive Benefits

The Communications Act itself imposes on LECs (but not CMRS carriers) “[t]he duty to provide ... number portability.”¹⁶ In conducting its RFA analysis, the Commission must be mindful that the requirement at issue derives not from Commission regulation, but from the statute itself. The LECs face a high hurdle to avoid this obligation. It is difficult to imagine how the Commission would explain to an appellate court that it had exempted, based on the Regulatory Flexibility Act, a group of carriers that are required by statute to provide LNP (LECs) from porting numbers with another group of carriers upon which the Commission has imposed an LNP obligation based on ancillary authority (CMRS).

competitive advantage over smaller LECs that wireless carriers gain by permitting porting beyond wireline rate center boundaries).

¹⁶ 47 U.S.C. § 251(b)(2).

The Commission has recognized the importance of LNP since even before the statute was amended to require LECs to provide it,¹⁷ and has consistently stressed its importance.¹⁸ In the *Verizon Wireless Forbearance Order*, the Commission addressed the benefits of LNP both in the context of wireless-to-wireless porting and wireline-to-wireless porting, finding that LNP generally and intermodal LNP specifically was necessary to protect consumers.¹⁹ In that decision, the Commission stated:

[A]s more consumers choose to use wireless instead of wireline services, the inability to transfer their wireline number to a wireless service provider may slow the adoption of wireless by those consumers that wish to keep the same telephone number they had with their wireline service provider. As the Commission found in the *1999 Forbearance Order*, we continue to view wireless LNP as providing important benefits to consumers.²⁰

Similarly, in the *Intermodal Order*, the Commission recognized the competitive benefits to be gained by imposing the intermodal porting requirements on all carriers, particularly in light of the unique advantages that mobile services can offer to customers that cannot be realized via wireline service. The Commission stated that it would not limit the intermodal porting requirement because “it would not be appropriate to prevent customers from taking advantage of the mobility or the larger local calling areas associated with wireless service.”²¹ In this

¹⁷ *Telephone Number Portability*, CC Docket No. 95-116, *Notice of Proposed Rulemaking*, 10 FCC Rcd 12350, 12361-62 (1995).

¹⁸ *See, e.g., Telephone Number Portability*, CC Docket No. 95-116, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, 8366-71 (1996).

¹⁹ *See Verizon Wireless’s Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability*, WT Dkt No. 01-184, CC Dkt No. 95-116, *Memorandum Opinion and Order*, 17 FCC Rcd 14972, 14978-80 (2002) (“*Verizon Wireless Forbearance Order*”).

²⁰ *Id.* at 14779-80 (internal citations omitted).

²¹ *Intermodal Order*, 18 FCC Rcd at 23708. In addition to mobility and larger local calling areas, CMRS carriers such as Dobson bring rural consumers benefits not available from LEC service, including high-speed data services.

proceeding, the Iowa Utilities Board pointed out that, in considering rural LECs' requests for suspension of the LNP requirement pursuant to Section 251(f), it "underscored the underlying importance of LNP to telephone competition."²² As the Commission and the states consistently have found, rural consumers – and, more importantly, rural small businesses – should not have to change their numbers to get these benefits on their primary line.

For these reasons, the LEC commenters are mistaken when they assert that intermodal LNP is "for the benefit of" CMRS carriers."²³ The ability to port numbers among carriers benefits the customers of all carriers that implement LNP. To the extent that more customers port from wireline carriers to CMRS carriers, it does not suggest an uneven "benefit" arising from the obligation, but instead demonstrates both the need for and the consumers' benefits from the capability. In the *Intermodal Order*, the Commission echoed this argument, finding that "[t]o the extent that wireline carriers may have fewer opportunities to win customers through porting, this disparity results from the wireline network architecture and state regulatory requirements, rather than Commission rules."²⁴

Calls for "the Commission to conduct a rational cost-benefit analysis" to determine if the costs of imposing intermodal LNP requirements outweigh the benefits that consumers derive from the availability of porting are groundless.²⁵ There is no requirement in the statute or Commission precedent for a cost-benefit analysis; the Regulatory Flexibility Act requires merely

²² Iowa Utilities Board Comments at 6.

²³ See, e.g., Montana Independent Telecommunications Systems Comments at 6-7; MoSTCG Comments at 12; Rural Carrier Comments at 9.

²⁴ *Intermodal Order*, 18 FCC Rcd at 23708.

²⁵ See, e.g., NTCA/OPASTCO Comments at 10.

that the Commission consider the impact of its regulations on small entities.²⁶ Indeed, the Commission conducted no such analysis before imposing wireless-wireless LNP – despite evidence that wireless consumers (particularly rural wireless consumers) valued other uses of resources, such as expansion of coverage, more highly. Rather, as noted above, the Commission examined whether such requirements were necessary to protect consumers.²⁷ Having found that the requirements were necessary to protect consumers, the Commission imposed such requirements on all carriers.

The statistics cited by some small LECs suggesting low demand for intermodal porting in the few months between implementation and the stay are irrelevant.²⁸ LNP implementation is a decision that will benefit customers over the long term, particularly as rural markets evolve and rural wireless network coverage continues to improve.²⁹ For example, as more advanced wireless data services become reliable in rural areas, more rural customers may have reason to substitute their wireline service with wireless service.

B. Intermodal LNP Is Not Unreasonably Burdensome for Small LECs to Implement

As CTIA accurately points out, the economic impact of the *Intermodal Order* on small LECs is minimal.³⁰ “The industry has worked hard to allow the vast majority of ports to be

²⁶ See 47 U.S.C. § 603.

²⁷ See, e.g., *Verizon Wireless Forbearance Order*, 17 FCC Rcd at 14984-85.

²⁸ See, e.g., MoSTCG Comments at 10; NTCA/OPASTCO Comments at 12-13; Nebraska Rural Independent Companies Comments at 2-4; Montana Small Rural Independents Comments at 6; South Dakota Telecommunications Association Comments at 6-7.

²⁹ See, e.g., *Verizon Wireless Forbearance Order*, 17 FCC Rcd at 14779-80.

³⁰ CTIA Comments at 5-8.

accomplished efficiently and with little economic cost.”³¹ Moreover, arguments that the intermodal porting requirements are burdensome because the cost recovery for porting imposes unreasonable burdens on rural LEC customers also should be rejected. The MoSTCG, for example, attempts to argue that, since they recover their LNP costs through an end-user surcharge and have a small customer base, the strain on their customers is unduly burdensome.³² First, any concerns over the Commission’s adopted cost recovery mechanism should have been challenged years ago when the Commission adopted this mechanism. Moreover, to the extent that individual carriers believe their customers face unreasonably costly burdens as a result of the implementation of intermodal LNP, they have the option of bearing the burden of proof to demonstrate that unique circumstances exist to justify a waiver from the Commission or a suspension from the state pursuant to section 251(f).

The rural ILEC commenters also exaggerate the extent of the obligations they face under the *Intermodal Order*. To the extent that a wireless carrier has no coverage in the small LEC’s territory, the *Intermodal Order* will not require the small LEC to allow porting to such carrier.³³ Similarly, the Commission should reject the counterfactual assertion by the MoSTCG that the intermodal porting requirement will “create a disincentive for wireless carriers to make investments in rural areas.”³⁴ To the extent that wireless carriers know that rural customers can port their wireline numbers to them, wireless carriers will have even greater incentives to improve service and coverage in rural areas.

³¹ *Id.* at 6.

³² MoSTCG Comments at 3.

³³ *Intermodal Order*, 18 FCC Rcd at 23706.

³⁴ MoSTCG Comments at 12.

Most important for the Commission's RFA analysis *today*, however, is the fact that the costs of implementing intermodal LNP are water under the bridge for the vast majority of small LECs. LECs have been required since 1999 to deploy LNP in any switch within 6 months of a request.³⁵ The latest CMRS LNP deployment date was May 24, 2004,³⁶ and wireless carriers submitted LNP requests to all LECs (and CMRS carriers) in their service areas well in advance of that deadline. The D.C. Circuit's decision staying the *Intermodal Order* was not released until March 11, 2005, and the Court's mandate did not issue, putting in place the stay, until May 12, 2005.³⁷ Thus, virtually all small LECs (except those that received exemptions from state commissions pursuant to section 251(f)) should have been ready to port numbers no later than May 24, 2004, and should have been porting numbers for over 9 months before the D.C. Circuit ruled, and almost a year before the stay was effective.³⁸ Moreover, between the date of the

³⁵ 47 C.F.R. § 52.23(c).

³⁶ 47 C.F.R. § 52.31(a)(iv) (requiring wireless carriers to implement LNP in any area, including outside the top 100 MSAs, within 6 months of Nov. 24, 2003); *see also, e.g., Numbering Resource Optimization; Implementation of the Local Competition Provision of the Telecommunications Act of 1996; Telephone Number Portability*, CC Docket Nos. 99-200, 96-98, and 95-166, *Fourth Report and order in CC Docket No. 99-200 and CC Docket No. 95-116, and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 99-200*, 18 FCC Rcd 12472, 12473 (2003).

³⁷ *See USTA supra*. The Court issued its mandate pursuant to Fed. R. App. Proc. 41(a) on May 12, 2005. The stay was not effective until that date. Fed. R. App. Proc. 42(c) provides: "The mandate is effective when issued." The 1998 Advisory Committee Notes discussing this provision state: "A court of appeal's judgment or order is not final until issuance of the mandate; at that time the parties' obligations become fixed." This conclusion is consistent with the D.C. Circuit's decision in *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), vacating portions of the FCC's unbundling rules. In discussing the effectiveness of its vacatur, the court indicated that its vacatur was effective upon issuance of the mandate. "As to the portions of the Order that we vacate, we temporarily stay the vacatur (*i.e.*, delay issue of the mandate)"

³⁸ Carriers that received suspensions may continue to rely on them to avoid the LNP obligation. As the Iowa Utilities Board points out, the suspension process allows states to consider any unique factual circumstances justifying suspension of the requirement. Iowa
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release of the *Intermodal* Order and the D.C. Circuit stay, the Commission denied LNP waiver requests filed by both small wireline and wireless carriers.³⁹

It is nothing short of bizarre that many small LECs and their associations acknowledge that most small LECs *already have spent the money to deploy LNP*,⁴⁰ and yet somehow argue that they should be relieved of the obligation to *provide* LNP. Are these carriers willing to forgo recovery of the costs they have incurred for implementation? If so, the impact of the cost must not be significant.⁴¹ If not, customers should not be required to absorb these costs without receiving the benefit of the service. In sum, whether or not the implementation of LNP imposed an economic burden on small LECs, the point is now moot. The RFA provides no basis to allow carriers that have deployed LNP capability to avoid providing their customers with ability to port their numbers.

Utilities Board Comments at 6. This is preferable to blanket relief from the requirement, which may unnecessarily deny rural consumers the benefits of LNP.

³⁹ *Telephone Number Portability, Petition of the North-Eastern Pennsylvania Telephone Company for Temporary Waiver of Its Porting Obligations*, CC Docket No. 95-116, *Order*, 19 FCC Rcd 8570 (WCB 2004); *Telephone Number Portability, Petition of Yorkville Telephone Cooperative Inc. and Yorkville Communications, Inc. for Limited Waiver and Extension of Time to Port Numbers to Wireless Carriers, to Support Nationwide Roaming of Ported Numbers, and to Participate in Thousands-Block Number Pooling; Petition of TMP Corp. and TMP Jacksonville, LLC for Waiver of Section 52.31(a) of the Commission's Rules; Petition of Choice Wireless, LC for Waiver of Section 52.31(a) of the Commission's Rules*, CC Docket No. 95-116, *Order*, 19 FCC Rcd 9296 (WTB 2004).

⁴⁰ *See, e.g.*, USTA Comments at 8-11; NTCA/OPASTCO Comments at 10-12; MoSTCG Comments at 2-3; South Dakota Telecommunications Association Comments at 7.

⁴¹ If small LECs that have *deployed* LNP are willing to forgo cost recovery if allowed to avoid *providing* LNP, this is strong evidence that their true concern is not the economic impact that is relevant in an RFA but rather their own competitive position in the marketplace.

III. THE FCC SHOULD PRODUCE A FINAL REGULATORY FLEXIBILITY ANALYSIS TO SATISFY THE COURT’S REQUIREMENT AND LIFT THE STAY WITHOUT FURTHER DELAY

Even though the Commission largely concluded that it was not imposing new substantial burdens in the *Intermodal Order*, it took steps nonetheless to reduce the burden on smaller carriers. Although at the time of the *Intermodal Order* the Commission explicitly stated that it “expect[ed] carriers that need to make technical modifications to do so forthwith,”⁴² the Commission allowed such smaller entities extra time to comply with the intermodal porting requirements. Specifically, the Commission provided carriers operating outside of the top 100 largest MSAs an extra six months to implement intermodal LNP.⁴³

The IRFA also recognized the Commission’s efforts to minimize significant impact on small entities. First, the IRFA pointed out that the Commission extended the deadline for carriers operating outside of the 100 largest MSAs to come into compliance with the intermodal porting requirements.⁴⁴ Also, rejecting the possibility of limiting the scope of intermodal porting as applied to smaller carriers, the Commission found unjustifiable concerns that wireless carriers may have an unfair competitive advantage if wireline carriers are required to port to wireless carriers that do not have a physical POI or numbering resources in the rate center associated with the ported number.⁴⁵ The IRFA found that no concerns raised by smaller carriers justified “denying wireline consumers the benefit of being able to port their numbers to wireless

⁴² As such, wireline carriers were required to support intermodal number portability long before the stay was issued. *See USTA supra*.

⁴³ *Intermodal Order*, 18 FCC Rcd at 23709.

⁴⁴ IRFA at ¶ 14.

⁴⁵ *Id.* at ¶ 13.

carriers.”⁴⁶ Moreover, the IRFA similarly rejected limiting intermodal porting as it applies to smaller carriers because of concerns over increased transport costs for smaller carriers for several reasons, including: the requirement to port outside of the carrier’s wireline rate center was outside the scope of this proceeding; the rating and routing issues regarding transport raised by rural wireline carriers were implicated in the context of non-ported numbers as well; and the rating and routing transport issues were being considered in other proceedings before the Commission.⁴⁷

As such, it can readily be determined that the FCC, in the context of both the *Intermodal Order* and IRFA, has adequately considered the burdens imposed on small, rural carriers. Moreover, as noted in both the *Intermodal Order* and the IRFA, wireline carriers can “file petitions for waiver of their obligation to port numbers to wireless carriers, if they could provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules.”⁴⁸ LECs who “assert an inability to port numbers to wireless carriers under the circumstances described herein ... bear the burden of demonstrating with specific evidence that porting to a wireless carrier without a point of interconnection or numbering resources in the same rate center to which the ported number is assigned is not technically feasible pursuant to our rules.”⁴⁹ Additionally, as pointed out in the IRFA, carriers with fewer than two percent of the nation’s subscriber lines in the aggregate nationwide may petition a state commission to suspend or modify the LNP requirements. Numerous states have taken advantage of this

⁴⁶ *Id.* at ¶ 13.

⁴⁷ *Id.* at ¶ 13.

⁴⁸ *Id.* at ¶ 14; *Intermodal Order*, 18 FCC Rcd at 23707.

⁴⁹ *Intermodal Order*, 18 FCC Rcd at 23707.

exception and, therefore, states have granted both temporary and permanent relief to such carriers from LNP requirements.⁵⁰

Having already determined that for all wireline LECs, no evidence in the record demonstrates that a substantial burden exists, the Commission should affirm its findings in the IRFA so that the stay can be lifted immediately. If certain carriers cannot meet the requirements imposed upon them by the new rules, they should be required to file a waiver so that the carrier requesting the waiver, the Commission and other interested parties have ample opportunity to address the unique circumstances that may be faced by such carriers.

There is no need, however, for the Commission take into further consideration issues raised by small businesses in response to the *Public Notice* before issuing a FRFA,⁵¹ primarily because these issues have already been considered by the Commission. Nor should the Commission consider specific scenarios raised in the comments highlighting the costs of particular carriers or groups of carriers.⁵² Such specific relief should be addressed by waiver to the FCC or state commissions. As adequately demonstrated by CTIA in its comments, the Commission's analysis in the IRFA satisfies the substantive requirements of the Regulatory Flexibility Act. As CTIA stated, the D.C. Circuit has explained that the Regulatory Flexibility Act requirements are “[p]urely procedural” and require “nothing more than the agency [to] file a FRFA demonstrating a reasonable good-faith effort to carry out the [Regulatory Flexibility

⁵⁰ IRFA at ¶ 15.

⁵¹ See, e.g., Office of Advocacy, U.S. Small Business Administration Comments at 7; Rural Carrier Comments at 10; Montana Small Rural Independents Comments at 12.

⁵² See, e.g., MoSTCG Comments at 2-3; NTCA/OPASTCO Comments at 10-11; Nebraska Rural Independent Companies Comments at 4; Montana Small Rural Independents Comments at 10; South Dakota Telecommunications Association Comments at 4-5; Montana Independent Telecommunications Systems Comments at 10; The United States Telecom Association Comments at 8-9.

Act's] mandate.”⁵³ As such, the Commission should remedy its purely procedural omission of failing to adopt a FRFA by finding that it already adequately considered the substantive issues contemplated by the Regulatory Flexibility Act. The *USTA* case requires the FCC to do no more, having not found that the rules adopted in the FCC's *Intermodal Order* were unduly burdensome on small entities, and only “stay[ing] future enforcement of the order against carriers that are ‘small entities’ under the [Regulatory Flexibility Act] ... until the FCC completes its final regulatory flexibility analysis and publishes it.”⁵⁴

CONCLUSION

For the foregoing reasons, Dobson respectfully requests that the Commission issue its FRFA as soon as possible so that the stay on the *Intermodal Order* can be lifted without further delay.

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⁵³ CTIA Comments at 10 (quoting *US Cellular Corp. v. FCC*, 254 F.3d 78, 88 (D.C. Cir. 2001)).

⁵⁴ *USTA*, 400 F.3d at 43.